IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation, Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, CHARLES von BERNUTH and JOHN HERKLOTZ, Defendants.	Civil Action No. 00-2041

ORDER

In this civil action, Plaintiff, WRS, Inc. ("WRS"), sought damages from Defendants, Plaza Entertainment, Inc. ("Plaza Entertainment"), Eric Parkinson ("Parkinson"), Charles von Bernuth ("von Bernuth") and John Herklotz ("Herklotz"), arising out of the failure of Plaza Entertainment to pay WRS for duplicating film and video titles, and the personal guaranties of Plaza Entertainment's obligations to WRS executed by Herklotz on May 6, 1998 and by Parkinson and von Bernuth on October 12, 1998. On February 20, 2007, judgment was entered in favor of WRS and against Herklotz and default judgments were entered in favor of WRS and against Plaza Entertainment, Parkinson and von Bernuth.

On March 8, 2007, Herklotz filed a Notice of Appeal from the judgment that had been entered against him. Subsequently, a question arose concerning the finality of the judgment from which Herklotz had appealed. To eliminate any question regarding the finality of the judgment against Herklotz and the jurisdiction of the United States Court of Appeals for the Third Circuit to consider his pending appeal, on November 2, 2007, WRS filed two motions. First, WRS filed a motion under Fed.R.Civ.P. 54(b), seeking certification, *nunc pro tunc*, that the entry of judgment against Herklotz on February 20, 2007 was final. Second, WRS filed a motion to modify the Court's February 20, 2007 Order entering default judgments against Plaza Entertainment, Parkinson and von Bernuth to expressly dismiss the counterclaims asserted by these Defendants against WRS, arguing that any liability WRS may have had on the counterclaims was discharged when its plan of reorganization was confirmed in the bankruptcy proceeding initiated by WRS in August 2001. (Document No. 160).

On February 8, 2008, WRS's Rule 54(b) motion was granted and the judgment entered against Herklotz was certified as final, and, on March 13, 2008, motions for relief from the default judgments that had been filed by Plaza Entertainment, Parkinson and von Bernuth pursuant to Fed.R.Civ.P. 60(b) were granted.

Under the circumstances, to the extent that WRS's motion to modify the Court's February 20, 2007 Order entering default judgments against Plaza Entertainment, Parkinson and von Bernuth was filed to eliminate any question concerning the finality of the judgment entered against Herklotz in this case, the motion has been rendered moot. The motion will, therefore, be DENIED. However, based on the arguments in opposition to the motion to modify raised by Plaza Entertainment, Parkinson and von Bernuth the denial is without prejudice to the right of the parties to renew the issue of the viability of the counterclaims in further proceedings to be held in this case.

AND NOW, this 31st day of March, 2008, IT IS SO ORDERED.

William L. Standish
William L. Standish
United States District Judge

cc: Counsel of Record

Eric Parkinson
1722 N. College Avenue
C-303
Fayetteville, AR 72703